

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

<p>MICHAEL A. HERNANDEZ,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>KEN HART, Alliance Police Officer,</p> <p style="text-align:center">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 4:12CV3075</p> <p>MEMORANDUM AND ORDER</p>
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This matter is before the court on its own motion. On April 16, 2012, Plaintiff filed his Complaint in this matter. (Filing No. [1](#).) However, Plaintiff failed to pay the filing fee or file a motion for leave to proceed in forma pauperis. (See Docket Sheet.) On April 19, 2012, the court direct Plaintiff to either tender the \$350.00 filing fee to the Clerk of the court or submit a request to proceed in forma pauperis. (Filing No. [5](#).) In doing so, the court warned Plaintiff that failure to comply by May 21, 2012, would result in the dismissal of this matter without further notice. ([Id.](#))

On April 23, 2012, Plaintiff filed an Objection. (Filing No. [6](#).) In his Objection, Plaintiff states that the court erred in filing his Complaint as a civil lawsuit. ([Id.](#)) He states that his Complaint is a “Criminal Complaint” and the Federal Rules of Civil Procedure do not apply. ([Id.](#) at CM/ECF pp. 1-4.) However, a private plaintiff cannot force a criminal prosecution because the “authority to initiate a criminal complaint rests exclusively with state and federal prosecutors.” See [*Mercer v. Lexington Fayette Urban Cnty. Gov’t*, No. 94-6645, 1995 WL 222178, at *1](#) (6th Cir. Apr. 13, 1995) (unpublished order); see also [*Parkhurst v. Tabor*, 569 F.3d 861, 867 \(8th Cir. 2009\)](#), (quoting [*United States v. Batchelder*, 442 U.S. 114, 124 \(1979\)](#) (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion.”)).

In light of this, and Plaintiff's failure to either tender the \$350.00 filing fee or submit a request to proceed in forma pauperis by the court's May 21, 2012, deadline, Plaintiff's Complaint is dismissed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Objection (Filing No. 6) is denied;
2. Plaintiff's Complaint (Filing No. 1) is dismissed without prejudice because Plaintiff failed to comply with this court's orders; and
3. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 25th day of May, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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